

CHUGACH ALASKA CORP.

IBLA 95-381

Decided January 28, 1998

Appeal from a Decision of the Alaska State Office, Bureau of Land Management, rejecting historical place selection application AA-11066.

Affirmed.

1. Alaska Native Claims Settlement Act: Conveyances:
Cemetery Sites and Historical Places--National Historic
Preservation Act: Generally

Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1994), authorizes the Secretary of the Interior to withdraw and convey existing historical places and cemetery sites to the appropriate regional corporation.

A selection application for a historical place is properly rejected when the site does not meet the criteria set forth at 43 C.F.R. § 2653.5. Under 43 C.F.R. § 2653.5(d), a site qualifies as "a historical site" based on the characteristics of the site in its own right or on the historical events that occurred there, not on the characteristics of a separate site which was evaluated on its particular merits. The fact that two other sites in the same area have been certified as "historical sites" under ANCSA has no bearing on the qualifications of another site, in the absence of evidence establishing a nexus between those sites.

APPEARANCES: Peter Giannini, Esq., Chugach Alaska Corp., Anchorage, Alaska, for Appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Indian Affairs and the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Chugach Alaska Corporation (Chugach) has appealed from a Decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 22, 1995, rejecting historical place application AA-11066, filed December 18, 1975, pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1) (1994).

The application described lands in secs. 21 and 28, T. 19 S., R. 5 E., Copper River Meridian. The site, called Katalla Complex #1, is located on Katalla Slough, within the Chugach National Forest, approximately 50 miles east of Cordova. According to the Bureau of Indian Affairs (BIA) Investigation Report (Report), Chugach "marked the site location on United States Geological Survey (USGS) quadrangle map, 1:63,360, Cordova (A-2)." See Report at 6.

Chugach's Statement of Significance (Statement) speaks in terms of a Katalla "Complex" which includes two other sites, AA-11077 and AA-11079. These two sites have been certified as the Katalla and Palm Point cemetery sites. See Answer, Exs. 1 and 2. According to Chugach's Statement, "the Katalla Complex is highly significant as a historical place because it was known as the 'capital' of the Tcicqedi (Eyak) Natives." (Statement at 1.) Chugach asserts that the entire complex is significant "in that it forms a distinguishable tract of land * * * and possesses integrity of location, setting, feeling and association." Id. Chugach's Statement contains quotes from several books dealing with the history and culture of the local Indians.

The BIA Report states as follows with respect to the texts mentioned in Chugach's Statement:

Frederica de Laguna reports in her book, Under Mount Saint Elias: The History and Culture of the Yakutat Tlingit, that the settlement at Katalla was referred to as Qatana and was occupied by the Galyix-Kagwantan, Tcicqedi and Ganaxtedi. Circa 1870, the Tcicqedi had an Eagle House, also known as On-a-Platform House, containing two carved interior house posts, each carved and painted to represent the Eagle, Beaver, and Beaver Dam. These house posts were later lost in a fire. (de Laguna 1972:104, 315)

The Eagle House at Katalla was built by Galushia's Tlingit uncle to accommodate the visiting Eyak Eagles, and could accommodate 16 families. (Birket-Smith and de Laguna 1938:37, 150)

Two legends are associated with the site. One of them is about Raven, a legendary "superman," and how Katalla Spit and Kayak (Whale) Island were created. (de Laguna 1972:864) the other is the story of how an old man bewitched a young girl and married her. (Krauss 1963-1970:245-246)

See Report at 6-7.

The BIA Report goes on to state that, although a thorough search was undertaken on June 8, 1982, no Native informants were found to provide information about the site. A National Park Service Cooperative Unit archeologist and a U.S. Forest Service archeologist participated in the investigation. The BIA Report states that a small non-Native cemetery

was found just outside the site to the south, but that "no evidence of past Native use" was found on the site; for this reason, no survey was performed. (Report at 7.)

On June 19, 1984, BIA certified that this application was not eligible for the following reasons:

1. Extensive field investigation by BIA personnel failed to find any evidence supporting the claim of a Native historic place.
2. The site is not associated with any event or person significant in the history of the Alaska Native peoples.
3. This site does not meet the criteria for selection as a Native historical place as required by 43 C.F.R. § 2653, et seq.

(Certificate of Ineligibility at B.) The BLM decision under appeal quoted and adopted these findings.

In its statement of reasons (SOR), Chugach quotes excerpts from the above historical texts and contends that, although the Eagle House no longer exists, the "Katalla site" embraced a village settlement during the 19th and early 20th centuries, as is evidenced by 1910 census records. Chugach also mentions the two legends associated with the site and contends that the site meets the criteria of a historical place under 43 C.F.R. § 2653.5(d).

Chugach critiques BIA's investigative efforts by noting that the investigators may have become discouraged when no remains of the Eagle House were readily apparent on the site. Moreover, it asserts, the investigators were unfamiliar with the people of the area and were therefore unable to locate Native informants. See SOR at 10. Chugach requests that the site be surveyed and conveyed as a historical site.

In their Answer, BIA and BLM (Appellees) point out that remains of the Eagle House were not found and that it is unlikely that the house ever stood on this site. See Answer at 11. Appellees cite the Chugach Archeological Inventory 1983, (SOR Ex. I, at 52 and 120), to point out that the location of the Eagle House "has never been pinned down" and that assumed locations for this structure range from Cape Martin to somewhere near the present Katalla and to "almost anywhere along the western shore of Katalla Bay from the mouth of the Katalla River south nearly to Palm Point." See SOR Ex. I, at 120. Appellees argue that even though there is "strong evidence of historical use of the general Katalla area by Alaska Natives," there is no evidence that either a historic village or the Eagle House existed on this site. See Answer at 11.

Appellees assert that Chugach's data apply generally to the entire Katalla area and are not specific to the site at issue. Appellees point

out that the 1910 census, (SOR Ex. C), fails to identify the particular site for this settlement. These individuals could have resided on either or both of the other two Katalla sites, certified as cemeteries. Appellees say that the only evidence of Native use of the site at issue is that some Native families and partly Native families occupied homes along the slough in the early 20th century. These dwellings, however, are not linked to specific historical uses or events. See Answer at 13.

[1] Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1994), authorizes the Secretary to withdraw and convey fee title to "existing * * * historical places." Regulation 43 C.F.R. § 2653.0-5(b) defines "historical place" as follows:

(b) Historical place means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wool gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained native historical activity associated with the tract or area.

The criteria for determining whether a site constitutes a historical place are set out at 43 C.F.R. § 2653.5(d), which provides:

For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

- (1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or
- (2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or
- (3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or
- (4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

Thus, under 43 C.F.R. § 2653.5(d), a site qualifies as "a historical site" based on the characteristics of the site in its own right or on the historical events that occurred there, and not on the characteristics of a separate site which was evaluated on its particular merits. The regulation does not speak of site "complexes" or clusters; nor does it indicate that a site lacking artifacts or evidence of historical events may qualify as a historical place based on the merits of some other site. Nothing in the regulation requires the weighing of geographical proximity between an already certified site and a site being evaluated as a factor bearing on the qualification of the latter. Thus, the fact that the other two Katalla sites have been certified has no bearing on the qualifications of the site here at issue.

As for the site at issue, Chugach has cited scholarly works dealing with the entire Katalla area, but has not shown a nexus between this site and outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Natives. Nor is there evidence of distinctive characteristics of a type, period, or a method of construction, possessing high artistic values, that is particularly linked to this site. The BIA investigation turned up no evidence of qualifying use specific to this site, and Chugach has presented no further supporting evidence.

Under the circumstances of this case, there is no further duty of BIA to engage in a further cultural or historical survey of the site because there are no identified sources of evidence originating on the site which would justify such an effort. Chugach, as the party challenging BLM's Decision rejecting its selection application, bears the burden of establishing by a preponderance of the evidence that such Decision is in error. Chugach has failed to meet this burden. See, e.g., Sealaska Corp., 127 IBLA 22, 31 (1993); Minchumina Homeowners Association, 93 IBLA 169, 178 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge